UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

B.E. TECHNOLOGY, L.L.C., **Plaintiff,** **v.** **SPARK NETWORKS, INC.,** **Defendant.**	**Case No. 2:12-cv-2832 JPM tmp** **JURY TRIAL DEMANDED**

PATENT SCHEDULING CONFERENCE NOTICE

Pursuant to Local Patent Rule 2.1(a), Plaintiff B.E. Technology, L.L.C. ("B.E.") and Defendant Spark Networks, Inc. ("Spark") jointly submit this Patent Scheduling Conference Notice informing the Court:

(1) Scheduling for a Patent Scheduling Conference

A. B.E.'s Position

B.E.'s position is this action is ripe to be scheduled for a Patent Scheduling Conference. B.E. believes that the Court should hold a consolidated conference to address consolidation of the related cases and other issues related to judicial economy and efficiency.

B. Spark's Position

Spark believes this action is not ripe for a Patent Scheduling Conference. On December 21, 2012, pursuant to 28 U.S.C. § 1404(a), Spark filed a motion to transfer this action to the Central District of California or, in the alternative, to the Northern District of California. (D.I. 20) Virtually all of the defendants in the 18 other cases filed by B.E. in this Court that assert infringement of the same patent as is asserted here (the '314 patent) have moved, or intend to

move, to transfer those actions to other venues. In view of these transfer motions, Spark believes that discovery and further scheduling of this action should be stayed until the Court first determines the judicial district(s) in which these actions should be venued. *See In re Fusion-IO, Inc.*, 2012 U.S. App. LEXIS 26311 (Fed. Cir. Dec. 21, 2012) (non-precedential order on writ of mandamus).

In the alternative, if the Court prefers not to defer all activities in the case until venue is determined, Spark respectfully submits that the Court should hold a preliminary multi-case management conference, to be attended by counsel for all parties, before this or any of the other 18 cases is deemed ripe for a Patent Scheduling Conference within contemplation of LPR Rule 2.1(d) or the preparation for such a conference pursuant to LPR Rules 2.1(b) and (c). Rule 16(a)(1)-(3), Fed. R. Civ. P., authorizes such an initial, plenary multi-case management conference.

While Spark does not believe the cases should be consolidated or even conducted concurrently in all respects, there are certain elements of the proceedings in each case wherein the actions required of the parties, or to be addressed by the Court, would be more efficient, and not vulnerable to additional confusion, if conducted concurrently. First, an initial case management conference involving all 19 cases would provide an opportunity to discuss whether a Joint Patent Scheduling Conference would be more beneficial or provide efficiencies if and when the time comes for a Patent Scheduling Conference. Second, an initial case management conference would provide an opportunity to discuss whether other portions of the procedures of the 19 cases should be coordinated, such as a joint claim construction hearing, depositions, and other discovery. Spark notes, in this respect, that, while 11 of the 19 cases involve the same '314 patent as is asserted here, 3 of those cases involve that patent and one other patent, and 8 cases

do not involve the patent asserted here at all. Thus, there are issues to consider in connection with deciding whether and how the various cases might be coordinated.

Spark also notes that all but one of the 19 cases currently share the same deadlines with regard to the Local Patent Rules, because the answers in those cases were filed on the same day (December 31, 2012). An initial case management conference would enable discussion of how the cases are similar or different (for instance, in regard to the asserted patents as mentioned above, and the accused products), and how those similarities or differences might facilitate or impede the currently parallel case schedules.

(2) Modifications to the Local Patent Rules

A. B.E.'s Position

B.E.'s position is this action should be consolidated with the other B.E. actions pending before this Court for consolidated claim construction proceedings and a trial on invalidity and unenforceability of the patents-in-suit[1] and that no modifications to the deadlines set by the Patent Local Rules are necessary, beyond any minor modifications necessary to synchronize the actions.

B. Spark's Position

While some level of coordination among the cases may serve the interests of judicial economy, Spark does not believe that this case should be consolidated with any other patent infringement actions filed by B.E. in this Court involving the same patent at issue. Should the

[1] B.E. Technology, L.L.C. v. Facebook, Inc., 2:12-cv-02769 JPM-tmp; B.E. Technology, L.L.C. v. Groupon, Inc., 2:12-cv-02781 JPM-tmp; B.E. Technology, L.L.C. v. Match.com L.L.C., 2:12-cv-02834 JPM-tmp; B.E. Technology, L.L.C. v. People Media, Inc., 2:12-cv-02833 JPM-tmp; B.E. Technology, L.L.C. v. Pandora Media, Inc., 2:12-cv-02782 JPM-tmp; B.E. Technology, L.L.C. v. LinkedIn Corporation, 2:12-cv-02772 JPM-tmp; B.E. Technology, L.L.C. v. Twitter, Inc., 2:12-cv-02783 JPM-tmp; B.E. Technology, L.L.C. v. Google Inc., 2:12-cv-02830 JPM-tmp; B.E. Technology, L.L.C. v. Microsoft Corporation, 2:12-cv-02829 JPM-tmp; B.E. Technology, L.L.C. v. Apple Inc., 2:12-cv-02831 JPM-tmp.

Court consider consolidation, Spark respectfully requests that the parties be provided an opportunity to fully brief and argue this issue.

Spark respectfully requests that the Court consider the following modifications to the requirements of the Local Patent Rules:

First, as discussed above in Section (1)B, Spark believes the Court should decide Spark's pending transfer motion before proceeding with a Patent Scheduling Conference, and that all other procedures and filings contemplated by the Local Patent Rules should be suspended pending resolution of that transfer motion. If Spark's motion is granted, the parties will be subject to a different case management order and schedule, regardless of whether the case is transferred to the Central or Northern District of California. Moreover, Spark submits that this approach would minimize any negative impact on judicial economy by helping to avoid duplication of effort between this Court and a transferee venue.

Second, if the Court does not suspend all procedures and filings called for in the Local Patent Rules pending resolution of the venue issue, Spark requests that the deadline for service of its Initial Non-Infringement Contentions pursuant to LPR 3.3 be rescheduled from 28 days after service of the Initial Infringement Contentions to 90 days after filing of Spark's Answer, to be due on the same date as Spark's Initial Invalidity and Unenforceability Contentions as set forth in LPR 3.5. Such an extension will allow for analysis of B.E's new allegations of infringement of many claims against Spark's many websites. B.E.'s Complaint identified only a single claim – claim 11 – of the '314 patent as allegedly infringed, but did not identify any of Spark's websites as being accused of that infringement. On January 7, 2013, however, B.E. served its Initial Infringement Contentions pursuant to LPR 3.1, which for the first time identified 7 claims as being infringed (claims 11, 12, 13, 15, and 18-20) by 5 specifically identified Spark websites

"and any other products and/or services identified in the attached Appendix A, and all reasonably similarly products and/or services." Appendix A contains 61 pages of claim charts, and Spark has more than two dozen websites. Additional time is needed to adequately respond to B.E.'s infringement contentions. Moreover, such an extension may provide the Court sufficient time to rule on the pending motion to transfer venue before the parties have to engage in substantial discovery efforts and without the Court having to enter a formal stay of discovery.

Third, Spark believes that the provisions of LPR 3.4, requiring producing or making available for inspection and copying copies of documents relating to Spark's non-infringement contentions, be made contingent upon the entry of a suitable protective order governing the production of highly confidential technical information, including source code. Spark respectfully submits that such a protective order needs to be even stricter than the "default" attorney-eyes-only provisions of the Local Patent Rules with respect to documentation like source code. The '314 patent-in-suit relates to a computerized method for presenting advertisements to users. As such, Spark expects that the documents and information contemplated by LPR 3.4 will likely include inspection of Spark's proprietary source code and, possibly, the source code of third-party advertisement servers. Such source code comprises trade secrets and other highly confidential technical information. Protective orders providing specialized treatment of source code even more restrictive than "attorneys' eyes only" are commonplace and necessary to ensure that Spark's most sensitive technical information – the source code that drives its business – is adequately protected in view of the security risks involved. For instance, protective orders covering source code may restrict production of the source code for inspection only on a stand-alone computer located at a secure location in producing counsel's office or on the producing party's premises, limit the number of pages

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